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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

CHRISTINE J. CATALANO,
Plaintiff,
v.
CAPITAL ONE SERVICES, LLC, and
DOES 1 through 10, inclusive;
Defendants.

Case No. '15CV1293 H JLB

**NOTICE OF REMOVAL OF
ACTION TO THE UNITED
STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF
CALIFORNIA UNDER 28 U.S.C.
§ 1441(a), 28 U.S.C. §1331
(FEDERAL QUESTION) and 28
U.S.C. § 1367(a)
(SUPPLEMENTAL
JURISDICTION)**

[San Diego County Superior Court
Case No. 37-2015-00014094-CU-
MC-NC]

Complaint Filed: April 24, 2015
Trial Date: TBA

**TO THE CLERK OF THE UNITED STATES DISTRICT COURT FOR
THE SOUTHERN DISTRICT OF CALIFORNIA:**

PLEASE TAKE NOTICE THAT defendant Capital One Services, LLC (“Capital One”), hereby invokes this Court’s jurisdiction under the provisions of 28 U.S.C. § 1441(a), 28 U.S.C. § 1331 and 28 U.S.C. § 1367(a), and removes this action from state court to federal court pursuant to 28 U.S.C. § 1446(b).

A. JURISDICTION

1. Capital One specifically alleges that this Court has federal question jurisdiction over this action pursuant to 28 U.S.C. §§ 1441(a) and § 1331 because Plaintiff Christine J. Catalano (“Plaintiff”) alleges two causes of action arising under the federal Telephone Consumer Protection Act (“TCPA”), 47 U.S.C. § 227, which is a law of the United States. Further, the Court has supplemental jurisdiction over the state law causes of action alleged in the Complaint pursuant to 28 U.S.C. § 1367(a).

B. STATEMENT OF THE CASE

2. On April 24, 2015, Plaintiff filed a Complaint in the Superior Court of the State of California for the County of San Diego, designated as Case Number 37-2015-00014094-CU-MC-NC (the “Action”). Pursuant to 28 U.S.C. § 1446(a), a true and correct copy of all process, pleadings and orders served upon Capital One in this case is attached hereto as Exhibit A.

3. Plaintiff asserts six causes of action in her Complaint against Capital One. Those causes of action include: (1) violation of California Civil Code §1788.17 of the Rosenthal Fair Debt Collection Practices Act (“Rosenthal Act”) (Under 15 U.S.C. §1692b(6)); (2) violation of California Civil Code §1788.17 of the Rosenthal Act (Under 15 U.S.C. §1692c(a)(2)); (3) violation of California Civil Code §1788.17 of the Rosenthal Act (Under 15 U.S.C. §1692c(c)); (4) violation of §1788.14(c) of the Rosenthal Act; (5) negligent violation of the Telephone Consumer Protection Act 47 U.S.C. §227 *et seq.*; and (6) knowing and/or willful violation of the Telephone Consumer Protection Act 47 U.S.C. §227 *et seq.*

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1 **C. BASIS FOR REMOVAL**

2 4. This Court has jurisdiction over this Action pursuant to 28 U.S.C. § 1331
3 because Plaintiff alleges two causes of action under the TCPA, which is a law of the
4 United States.

5 5. Specifically, Plaintiff's Complaint alleges that Capital One violated the
6 federal TCPA by using an "automated telephone dialing system" and/or an "artificial
7 or prerecorded voice" to telephone Plaintiff without her consent. *See* Ex. A., Compl.,
8 ¶¶ 16, 47, 60-63. Adjudication of Plaintiff's Complaint thus requires an analysis and
9 construction of federal law. Thus, this Action is one which may be removed to this
10 Court by Capital One pursuant to 28 U.S.C. § 1441(a) and § 1331 because this Court
11 would have had original jurisdiction founded on Plaintiff's claims arising under the
12 TCPA.

13 6. Additionally, this Court has supplemental jurisdiction over the remaining
14 state law Rosenthal Act claims, because they "form[s] part of the same case or
15 controversy." 28 U.S.C. § 1367(a). A state claim is part of the same case or
16 controversy if it shares a "common nucleus of operative fact" with the federal claim,
17 and if they would normally be tried together. *See, e.g., Trustees of the Constr. Indus.*
18 *& Laborers Health & Welfare Trust v. Desert Valley Landscape Maint., Inc.*, 333 F.
19 3d 923, 925 (9th Cir. 2003). The facts related to Plaintiff's state law claims are
20 intertwined with and based upon her allegations of wrongdoing under the federal
21 claims arising under the TCPA. Specifically, like Plaintiff's claims arising under the
22 TCPA, the state law causes of action largely involves the same alleged debt collection
23 calls and Plaintiff's allegation that Defendants made those calls to Plaintiff without
24 her consent, despite attorney notification and with the intent to harass. The Court
25 should therefore extend supplemental jurisdiction over Plaintiff's state law claims
26 arising under the Rosenthal Act.

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D. ALL PROCEDURAL REQUIREMENTS FOR REMOVAL HAVE BEEN SATISFIED.

7. Removal of this action is timely. Capital One was personally served with a copy of the Summons and Complaint in this action on May 12, 2015. Therefore, this Notice of Removal is “filed within thirty [30] days after receipt by the defendant . . . of a copy of [Plaintiff’s Summons and Complaint]” in accordance with the time period mandated by 28 U.S.C. §1446(b).

8. Capital One is the only named Defendant in the action and, therefore, no consent of additional parties is required.

9. Venue lies in the United States District Court for the Southern District of California pursuant to 28 U.S.C. §1441(a) because the Action was filed in this District.

10. As stated above, pursuant to 28 U.S.C. § 1446(a), a true and correct copy of all process, pleadings and orders received by Capital One from Plaintiff in the Action are attached hereto as Exhibit A.

11. Written notice of the filing of this Notice of Removal will be promptly served upon Plaintiff. Capital One will also promptly file a copy of this Notice with the Clerk of the Superior Court of California, County of San Diego.

WHEREFORE Capital One prays that the above Action now pending against it in the Superior Court of the State of California, County of San Diego, be removed therefrom to this Court.

DATED: June 10, 2015

DOLL AMIR & ELEY LLP

By: /s/ Connie Y. Tcheng
 CONNIE Y. TCHENG
 Attorneys for Defendant,
 CAPITAL ONE SERVICES, LLC